

Richard E. Levine (SB #88729)
LEVINE & BAKER LLP
One Maritime Plaza, Suite 400
San Francisco, CA 94111
Telephone: (415) 391-8177
Facsimile: (415) 391-8488
rlevine@levinebakerlaw.com

Joseph V. Norvell (*pro hac vice*)
Joseph T. Kucala (*pro hac vice*)
Jay M. Burgett (*pro hac vice*)
NORVELL IP LLC
1776 Ash Street
Northfield, IL 60093
Telephone: (847) 809-2212
Facsimile: (312) 268-5063
jkucala@norvellip.com

Attorneys for Plaintiffs
ROBERT TRENT JONES II, INC.
ROBERT TRENT JONES LICENSING GROUP, LLC

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

ROBERT TRENT JONES II, INC. and
ROBERT TRENT JONES LICENSING
GROUP, LLC

Plaintiffs,

v.

GFSI, INC. d/b/a GEAR FOR SPORTS,
INC.

Defendant.

Case No. 07-CV-04913-SC

**PLAINTIFFS' MOTION FOR
CLARIFICATION AND MOTION FOR
LEAVE TO FILE MOTION FOR
RECONSIDERATION OF ORDER
DENYING PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Judge Samuel Conti

Pursuant to Federal Rule of Civil Procedure 60(b) and Local Rule 7-9, Robert Trent Jones II, Inc. and Robert Trent Jones Licensing Group, LLC file this Motion for Clarification and Motion for Leave to file Motion for Reconsideration of Order denying Plaintiffs' Motion for

**MOTION FOR LEAVE TO FILE MOTION FOR CLARIFICATION AND RECONSIDERATION OF
ORDER DENYING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

1 Preliminary Injunction. A copy of Plaintiffs' proposed Motion for Reconsideration of Order
 2 Denying Plaintiffs' Motion for Preliminary Injunction and Request for Oral Hearing and Leave
 3 to Submit Additional Evidence is attached as Exhibit A.

4 **INTRODUCTION**

5 On December 3, 2007, Plaintiffs filed their Motion for Preliminary Injunction. (Docket
 6 No. 11). Plaintiffs' Motion sought to preliminarily enjoin Defendant from two destructive
 7 activities: (1) the sale of apparel bearing the "Robert Trent Jones" trademark to discount stores;
 8 and (2) the sale or distribution of damaged, defective, seconds or non-conforming apparel
 9 bearing the "Robert Trent Jones" trademarks to any person or entity without first removing said
 10 trademarks. After briefing by both parties, the Court entered its Order, on February 4, 2008,
 11 denying Plaintiffs' Motion for Preliminary Injunction with respect to the first activity, but did not
 12 opine on the second activity for which an injunction was also sought. (Docket No. 50).

14 **ARGUMENT**

15 **A. Plaintiffs Respectfully Request Clarification On the Order Regarding the Sale of** 16 **Damaged, Defective Apparel Bearing the Robert Trent Jones Trademarks.**

17 Plaintiffs hereby move this Court for clarification regarding the Court's Order dated
 18 February 4, 2008 ("Order) denying Plaintiffs' motion for preliminary injunction, under Rule
 19 60(b) of the Federal Rules of Civil Procedure. Rules 60(b)(1) & (6) allow the Court to relieve a
 20 party from an Order based upon "mistake, inadvertence, surprise or excusable neglect" or "any
 21 other reason that justifies relief." Fed. R. Civ. P. 60(b)(1) & (6).

22 Plaintiffs' Motion for Preliminary Injunction sought relief regarding two separate
 23 activities of Defendant: (1) the sale of apparel bearing the "Robert Trent Jones" trademarks to
 24 discount stores; and (2) the sale or distribution of damaged, defective, seconds or non-
 25 conforming apparel bearing the "Robert Trent Jones" trademarks to any person without first

1 removing said trademarks. The Order denied Plaintiffs' Motion for Preliminary Injunction with
 2 respect to the first activity, but did not opine on the second activity for which an injunction was
 3 also sought. (Docket No. 50). The evidence submitted by Plaintiffs included the following:
 4 Defendant's *admissions* regarding the sale of damaged or defective apparel bearing the Robert
 5 Trent Jones trademarks; Defendant's handling of damaged or defective apparel bearing the
 6 Robert Trent Jones trademarks; and Defendant's sale of damaged or defective apparel bearing
 7 the Robert Trent Jones trademarks, physical samples of which were presented to the Court.
 8 (Docket Nos. 11 & 39).

10 The Order issued by the Court, either through mistake or inadvertence, neither grants nor
 11 denies Plaintiffs' second request for relief regarding the sale of damaged, defective product
 12 bearing the Robert Trent Jones trademarks. While the Order acknowledges Plaintiffs' allegation
 13 that Defendant is selling damaged or defective goods bearing the Robert Trent Jones marks out
 14 of its warehouse during "dock sale" events and that Defendant agreed it would monitor the dock
 15 sales to assure that it was not selling defective merchandise bearing the Robert Trent Jones
 16 marks, Plaintiffs are entitled to an order effectively restraining Defendant from continuing to sell
 17 damaged or defective apparel bearing the Robert Trent Jones marks. (Order pp. 4-5). Thus,
 18 Plaintiffs request clarification from the Court on this issue.

19
 20 **B. Motion for Leave of Court to file a Motion for Reconsideration of the Court's**
 21 **Order Denying Plaintiff's Motion for Preliminary Injunction under Local Rule**
 22 **7-9.**

23 Local Rule 7-9(a) states "Before the entry of judgment adjudicating all of the claims and
 24 the rights and liabilities of all the parties in a case, any party may make a motion before a Judge
 25 requesting that the Judge grant the party leave to file a motion for reconsideration." Local Rule
 7-9(b) set forth the grounds for a motion for leave to file a motion for reconsideration. Plaintiffs
 specifically make this motion on the basis of the following: (1) there exists a material difference

1 in fact from that which was presented to the Court; and (2) the Court failed to consider material
 2 facts and dispositive legal arguments which were presented to the Court before the order denying
 3 Plaintiff's Motion for Preliminary Injunction. Local Rules 7-9(b)(1) & (3). The substance of
 4 Plaintiffs' arguments supporting their bases for reconsideration are more specifically detailed in
 5 Plaintiffs' proposed Motion for Reconsideration of Order denying Plaintiffs' Motion for
 6 Preliminary Injunction and Request for Oral Hearing and Leave to Submit Additional Evidence,
 7 a copy of which is attached as Exhibit A.

8 **CONCLUSION**

9
 10 Based upon the foregoing, Plaintiffs respectfully request clarification from the Court on
 11 their second claim for relief regarding the sale of damaged, defective, seconds or otherwise non-
 12 conforming apparel bearing the Robert Trent Jones trademarks. Plaintiffs further request that the
 13 Court grant Plaintiffs leave and enter Plaintiffs' Motion for Reconsideration of Order denying
 14 Plaintiffs' Motion for Preliminary Injunction and Request for Oral Hearing and Leave to Submit
 15 Additional Evidence. If leave is granted by the Court, then Plaintiffs hereby request an
 16 expedited briefing schedule. Plaintiffs submit herewith a proposed order, including a proposed
 17 briefing schedule.

18 Respectfully submitted,

19
 20
 21 Dated: February 15, 2008

 Richard E. Levine (SB #88729)
 LEVINE & BAKER LLP
 One Maritime Plaza, Suite 400
 San Francisco, CA 94111
 Telephone: (415) 391-8177
 Facsimile: (415) 391-8488
 rlevine@levinebakerlaw.com

24
 25 Joseph V. Norvell (*pro hac vice*)

1 Joseph T. Kucala (*pro hac vice*)
2 Jay M. Burgett (*pro hac vice*)
3 NORVELL IP LLC
4 1776 Ash Street
5 Northfield, IL 60093
6 Telephone: (847) 809-2212
7 Facsimile: (312) 268-5063
8 jkucala@norvellip.com

9 Attorneys for Plaintiffs

10 ROBERT TRENT JONES II, INC.
11 ROBERT TRENT JONES LICENSING
12 GROUP, LLC
13
14
15
16
17
18
19
20
21
22
23
24
25